

Coal Mine Examiners, Authority of. Mine Foreman, Qualifications of. Fire Boss, Qualifications of. Mine Examiner, Qualifications of.

The board of mine examiners has no authority to examine a person for a certificate of competency, or to issue such a certificate, unless the applicant is a citizen of the United States. A person holding a certificate issued by competent authority of some other state, who desires a permanent certificate of competency from the board of examiners must accompany his application with credentials showing that he is a citizen of the United States. Where a temporary certificate is issued to a mine foreman who has continually worked for more than one year for the same company, the law is silent as to his qualifications as to citizenship and age.

Helena, Montana, April 21, 1909.

Hon. A. C. Spencer, County Attorney, Red Lodge, Montana.

Dear Sir:

I am in receipt of your letter of the 20th instant, requesting an opinion upon the following propositions:

1. Can a person, under the provisions of Chapter 69, Laws 1909, take the examination for a certificate as mine foreman,

or fire boss, or mine examiner, who has resided in the United States for a period of more than five years and has taken out his first papers but has not received his final citizenship papers. If he can take the examination, and passes, is he entitled to a certificate at such time, or later, when he becomes a full citizen of the United States?

2. In the month of February of this year, and before the passage of the law contained in said Chapter 69, the state coal mine inspector issued a certificate to a person who is not a citizen of the United States but who is otherwise fully qualified under the law. Does this new law apply to the person receiving such certificate?

In answer to your first question, you are advised that under the provisions of said Chapter 69 a certificate of competency cannot be issued to a mine foreman, mine examiner or fire boss unless he is a citizen of the United States. And, Section 7 of that law provides that

"An applicant for examination for any certificate herein provided for, before being examined, shall register his name with the State Coal Mine Inspector and file with him the credentials required by this act, to-wit, an affidavit as to all matters of fact establishing his rights to, and qualifications for, receiving the examination."

Therefore, it is apparent that before a man is entitled to be given an examination by the Board of Examiners that he must satisfy them that he is a full citizen of the United States; otherwise, he is not entitled to take the examination, nor to a certificate of competency in case he did successfully pass the examination.

In answer to your second question, you are advised that under said Chapter 69 every person who acts as a mine foreman, mine examiner or fire boss must have a certificate of competency issued by the Board of Examiners, pursuant to the provisions of said law, and there is only two cases in which they are entitled to such certificate without examination. One is provided for by Section 5, where a mine foreman has been continually employed for a period of one year preceding the approval of this law by the same firm or corporation, in which case the Board of Examiners may issue to him a temporary certificate without examination, which certificate is only good during the time that he continues to work for the same firm; and the law in this case seems to be silent as to the person's citizenship or age.

Section 6 provides that the board may, in its discretion, issue certificates without examination to persons presenting, with proper credentials, certificates issued by competent authority in this or other states. Under this provision it is for the board to determine, in the exercise of its sound discretion, whether the person to whom a certificate was issued by the State Coal Mine Inspector in February possesses proper credentials to entitle him to a certificate without further examination. The question then arises as to what is meant by the phrase "proper credentials," as used in Section 6. Section 7 provides for the filing of "creden-

tials" and defines the same as "all matters of fact establishing his rights to and qualifications for receiving the examination." Therefore, it appears that by "proper credentials" is meant an affidavit showing that the person possesses the qualifications as to age, citizenship and character required by Sections 2 and 3 of the law. If a person does not present credentials showing these qualifications he is not entitled to a certificate under Section 6.

Very truly yours,

ALBERT J. GALEN,

Attorney General.